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March 12, 2003

Doug Ellis, Public Information Officer
Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504-0908

Re: Proposed WACs 390-17-100 and 390-17-110

Dear Doug:

I am writing to address confusion regarding the unfair labor practice issue that may have occurred at the Commission meeting on January 28.

I understood you to say that Marvin Schurke, Executive Director of PERC, had opined that it would not be an unfair labor practice for the employer to include, along with notice under RCW 42.17.680(3), a commentary criticizing the union's political action campaign. Based on my conversation with Mr. Schurke today, that is not accurate.

Mr. Schurke advised me that he saw no ULP if the employer simply passed on notice of the employee's statutory rights under 680(3). I entirely agree with that observation.

However, the current version of WAC 390-17-110 does not prevent the employer from including with the notice, a commentary critical of the union's political action campaign.

Mr. Schurke agreed that if, along with the notice of 680(3) rights, an employer enclosed a letter denigrating the political activities of the union, that might arguably be an unfair labor practice, based on improper interference with the union. Of course, the ultimate determination of whether an unfair labor practice has been committed is fact specific.

Please provide a copy of this letter to the Commissioners well in advance of the March 25 meeting. It is important that the Commissioners understand that, in Mr. Schurke's opinion, an employer's comments criticizing the union's use of members' voluntary political contributions can, indeed, constitute an unfair labor practice.

The WSLC submits that the Commission is not well-advised to issue a rule that requires employers to communicate with union members regarding political communications, and thereby sets the stage for potential unfair labor practices by employers.

Thank you for your anticipated cooperation with this request.

Very truly yours,

James D. Oswald

cc: Marvin Schurke
Diane McDaniel

## ALTERNATIVE A

Union provides notice; employer terminates deductions if it has not received confirmation that notice was provided

(1) [unchanged]

(2)(a) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) shall provide each employee from whom it is receiving contributions pursuant to such payroll deduction written notification as required by paragraphs (2)(c) and (3) of this Rule., and shall submit confirmation that such notice has been accomplished to the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries that has been deducting contributions pursuant to such authorization.

(b) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each employer or other entity responsible for the disbursement of funds in payment of wages or salaries shall terminate any withholding or diversion of any portion of an employee's wages or salaries for contributions to political committees or for use as political contributions, unless it has received written confirmation that within the prior twelve months, the employee has been provided with written notification as required by paragraphs (2)(b) and (3) of this Rule.

[The text that is currently (2)(b) would become (2)(c) ]

(3) [unchanged]

## ALTERNATIVE B

Union provides notice; employer may notify union if no notice, or may send out form notice to affected employees

WAC 390-17-110

(1) [unchanged]

(2)(a) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) shall provide each employee from whom it is receiving contributions pursuant to such payroll deduction written notification as required by paragraphs (2)(c) and (3) of this Rule and shall submit confirmation that such notice has been accomplished to the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries that has been deducting contributions pursuant to such authorization.

(b) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each employer or other entity responsible for the disbursement of funds in payment of wages or salaries shall take either one of the following steps if it has not received confirmation that the notice required by RCW 42.17.680(3) and WAC 390-17-110(2)(a) has been provided within the prior twelve months:

i. Notify the entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) that it has not received the confirmation required by paragraph (2)(a); or

ii. Provide notice to each employee from whom it is withholding or diverting wages for contributions to political committees or for use as political contributions a notice in the following form: "Our records reflect that funds are currently being deducted from your wages or salary for contributions to [insert political committee or other recipient] pursuant to a written authorization from you. This communication is mailed pursuant to state law, which requires that you be notified every twelve months that you have the right to revoke the authorization for that request at any time."

[The text that is currently (2)(b) would become (2)(c)]

(3) [unchanged]

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March 14, 2003

Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504-0908

**Re: Opposition to Rule Proposed in WSR 03-04-094 (WAC 390-17-110)**

Dear Commissioners:

This submission provides further evidence and authorities for the Washington State Labor Council's opposition to proposed WAC 390-17-110. It also provides a suggested language for an alternative rule that would more accurately embody the requirements of RCW 42.17.680(3).

## SUMMARY

The Summary provided in WSR 03-04-094 indicates that the proposed rule "clarifies who sends the notifications of nondiscrimination and revocation to employees." In fact, the rule fails to clarify that critical question. The proposed rule is itself ambiguous. At 390-17-110(2)(a), it states that "each employer or other entity responsible for the disbursement of wages or salaries *shall ensure* written notification is directly provided [to employees who have authorized payroll deduction]."

The statute is ambiguous, providing only that employees "shall be notified." Rather than resolving that ambiguity, the proposed rule replaces it with another ambiguity: does the employer's obligation to "ensure" mean that the employer must provide the notice, or simply receive confirmation that the notice has been provided?[1]

That ambiguity must be solved. If the rule is intended to state that the employer shall provide the notice – which the WSLC submits is incorrect – it should say so. If the rule is intended to require only that the employer confirm that the notice was provided as a

[1] Because the statute encompasses not only employers, but other entities responsible for the payment of wages, it apparently reaches payroll service providers and the like. If the regulation is read to mean that the entity preparing paychecks is to provide notice, it places a completely unwarranted burden on payroll services to provide notice.

condition of continuing the political check off – an interpretation the WSLC believes is correct – it should say that. If the rule is intended to require that the employer provide the notice only if the union has failed to do so, it should say that. But it would be an abdication of the Commission's responsibility to promulgate a rule that leaves the question unresolved, and thereby fails to provide guidance to those subject to the rule.

General guides for determining legislative intent support the conclusion that the union should give the notice. Basically, the Senate debate assumed that the employer would provide notice. But the sponsor of the bill in the House, who also chaired the committee that conducted hearings on the bill, introduced the bill on the House floor by stating that the union would provide the notice. The statement in the House is entitled to greater weight because it was: (a) later in time; (b) made after significant discussion by lobbyists and legislators that the union would provide the notice; (c) made after committee testimony stating that the union would give notice; and (d) made by the sponsor and chair of the committee that reviewed the bill.

The notion that the employer would provide the notice is based on Senator Georgia Gardner comments during debate on the floor amendment that inserted the language at issue. The attached declaration of former Senator Gardner reflects that she misspoke when she indicated that the employer would provide notice. Her declaration, which is properly considered as further evidence of legislative intent, undermines the sole support for having the employer provide the notice.

Consideration of the structure and function of 680(3) indicates that the employer's role is not to give notice, but to make deductions only if the authorization requirements have been met. The discussion of 680(3) in the Supreme Court's *EFF v. WEA* decision supports the same conclusion. Even if the 2002 amendment was interpreted as a fundamental change in the structure of the section, the employer should not bear primary responsibility to provide notice.

In short, the current rule should not be adopted because it is fatally ambiguous. The Commission should instead promulgate a rule that requires that the union give the annual notice, and the employer's duty is to terminate deductions if the union has failed to confirm that the required notice was given. Failing that, the rule should explicitly provide that the employer may provide notice only in a specified form and only if the union has failed to do so.

## ARGUMENT

### 1. The Proposed Rule is Ambiguous

To frame this issue, it is appropriate to review the actual text of RCW 42.17.680(3), as amended by the 2002 legislature:

> (c) No employer or other person or entity responsible for the disbursement of funds or salaries may withhold or divert a portion

> of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. ~~The request is valid for no more than twelve months from the date it is made by the employee.~~ *The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.*

The italicized material was added by the 2002 legislature.

The proposed rule (WAC 390-17-110(2)(a)) provides, in pertinent part:

> [A]t least annually by June 30, each employer . . . *shall ensure* written notification is directly provided to the employees from whom funds are being withheld for contributions . . .

The italicized language is inherently ambiguous. Like the statute, the proposed rule *fails to identify the entity that is to provide the annual notice.* Although employers are required to assure that notice was provided, it is unclear whether they are required to provide the notice. Employers may understand the regulation to require that they provide the notice. Or they may understand that they need only obtain confirmation that the notice has been provided. The regulation should provide clarity on this point.

As discussed below, the clarity should consist of confirming that the employer's obligation remains an essentially passive one – don't make the deductions without proper authorizations and annual notices.

## 2. The Rule Should Require that the Union Provide the Annual Notice

### a. Review of legislative history

Senator Sandra Romero introduced HB 2822 to eliminate the requirement in RCW 42.17.680(3) that employees reauthorize their voluntary payroll deductions for political purposes every twelve months. The bill was first read on January 25, and passed out of the Committee on State Government on February 8. App. A.

A companion Senate bill, SB 6713, was sponsored by Senators Jacobsen and Prentice. After the bill passed out of the State Law and Government Committee and the Rules Committee, it was presented on the floor of the Senate on February 16. On that day, four floor amendments were proposed. Of the four proposed amendments, two passed. The first was sponsored by Senators T. Sheldon and McCaslin, and modified 680(2) to require annual notice of protections against discrimination. The second, co-sponsored by

Senators Carlson, Gardner, and Hargrove, required annual notice of the right to revoke. On February 16, the Senate passed the bill, as ESB 6713. App. B.

During debate on the bill, Senator Gardner indicated that the burden on the employer from providing the required notice would be slight. Various Senators expressed their opposition to requiring that the employer provide annual notice. App. C

Attached to this letter is an affidavit by former Senator Gardner, in which she testifies that the amendment had been proposed very shortly before the floor discussion occurred, and she simply misspoke when she said that the employer would provide the notice. App. D.

The Committee hearing in the House reflects an understanding the union would provide the annual notice. At the February 26, 2002 hearing before the House State Government Committee, union representatives Diane McDaniel and Linda Lanham spoke in favor of ESB 6713. They testified that "many labor groups already remind employees of their rights on a regular basis. App. E[2]

The House debate was framed in terms of the union, or entity receiving the contribution, providing the annual notice. When the bill came to the full House for a vote on March 8, Senator Romero, the original sponsor of the companion bill, stated that **the bill "requires that *the unions*** and those that seek to take the donation to **notify every person in the program every year**." (emphasis added). Following Rep. Romero's statement, there was a response from Rep. Schindler, who stated her opinion that the requirement was too limited, because, in her words, "it is absolutely necessary for the organization taking the payroll deduction to make sure they enlist the yes or the affirmative answer every single time that that deduction is going to be taken each year." App. F

ESB 6713 passed the House on March 8 and later became law.

**b. The legislative history is properly interpreted as requiring that the union (or entity receiving the contribution) provide annual notice of the right to revoke**

If the current rule is intended to mean that the employer is to provide the annual notice, it reflects a decision to entirely disregard the events in the House, and rely entirely on the statements during the Senate discussion of proposed floor amendments. Staff has suggested that the Commission should rely solely on the Senate debate simply because the Senate debate lasted longer. There is no support for the "lasted longer" method of resolving contradictions in a legislative history. On the other hand, there are at least four reasons why the House discussion is entitled to greater weight.

i. The House proceeding was later in time and specifically addressed the issue.

[2] Counsel for the WSLC has audited the hearing tape and confirmed that this comment was made in the context of the amendment requiring annual notice of the right to revoke.

The first reason for giving the House discussion greater weight is that it was later in time. It is entirely reasonable to assume that a discussion that occurs three weeks after an amendment was first proposed will better reflect a considered understanding of its import than a discussion that occurs moments after it is proposed. This is consistent with the general rule regarding legislative enactments, which is that in the face of apparent conflicts between statutes, courts generally give preference to the more specific and more recently enacted statute. *Tunstall v. Bergeson*, 141 Wn.2d 201 (2000). This applies by analogy to the legislative process, where it is logical to assume that if a later legislative proceeding directly addressed a question discussed previously, and contradicts statements made earlier, it is, in effect, correcting the earlier statements.

ii. The issue of who would provide notice was discussed with legislators in the interim between the Senate and House debates.

Evidence on this question is already before the Commission. At the January 28 hearing, Mike Ryherd testified that between the February 16 discussion in the Senate, and the March 8 discussion in the House, he was engaged in a series of meetings with legislators and staff in which it was explicitly stated that the annual notice was to be provided by the union.[3] Mr. Ryherd's testimony rings true, as the discussion in the Senate reflected dissatisfaction with imposing any burden on the employer. Therefore, it is entirely consistent that legislators would have desired assurances that the union, rather than the employer, would assume that burden.

iii. The House debate followed Committee hearings where unions indicated that they would be providing the required annual notice.

The third reason to rely on the formulation by Rep. Romero is that the House debate followed committee hearings regarding the amendment. Because the amendment was made on the floor of the Senate, there were no committee hearings to explore the implications of the annual notice requirement. In the House hearing, union representatives addressed the annual notice amendment, and pointed out that because unions already provided similar notices, they saw no problem with providing the notices contemplated by 680(3). App. E

iv. Because Rep. Romero was chairman of the committee that considered the bill, as well as sponsor of the original bill, her comments are entitled to substantial weight.

The statement by Rep. Romero that the union (or entity receiving the contributions) would provide the notice is entitled to special weight because she was the chair of the State Government Committee that passed the bill to the full House (App. E ), and the sponsor of the original bill (App. A). It is well-established that a summary of the bill by

[3] Counsel for the WSLC asserted at the January 28 hearing that, prior to the rule-making on the 2002 amendments to 680, neither he nor his client was aware that Sen. Gardner had mentioned the employer giving the required notice. Mr. Ryherd's testimony reflects that during the 2002 session, he was aware of questions about who would provide the annual notice. Prior to the January 28 hearing, counsel had never discussed the 680 amendments with Mr. Ryherd, and was unaware of the events that Mr. Ryherd described during the hearing.

the chair of the committee that either considered a bill, or that reconciled the amendments made by the other house, are properly considered to determine legislative intent. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921); *U.S. v. Dickerson*, 310 U.S. 554 (1940); *State v. Leek*, 26 Wn. App. 651, 657 (Wash. App. 1980). The Washington Supreme Court, in *Marine Power & Equipment Co., Respondent, v. Washington State Human Rights Commission Hearing Tribunal*, 39 Wn. App. 609 (Wash. App. 1985), acknowledged that comments by the sponsor of a bill are entitled to special weight, as the sponsor may be "expected to be particularly well informed about [the bill's] purpose, meaning, and intended effect." Here, where Representative Romero was both the chair of the relevant committee and the sponsor of the original bill, her comments should be accorded great weight.

In framing the rule at issue here, the PDC staff, rather than follow the established rules for determining legislative intent, entirely disregarded the later, more carefully considered and informed statements in the House. This was an error.

v. Former Senator Gardner's declaration confirms that the staff's interpretation was incorrect.

The staff's decision to rely entirely on the discussion on the Senate floor is undercut by the declaration of former Senator Georgia Gardner, which is attached to this submission as Appendix D. In her declaration, Ms. Gardner states that it was never her understanding that the employer would provide annual notice. Her statement to that effect was an error that occurred late on a Saturday afternoon or evening, after the Senate had been in session for several consecutive days. Unlike Rep. Romero, she did not have an in depth grasp of the bill or its issues.

It is appropriate for the Commission to consider Ms. Gardner's declaration regarding the Senate debate. In *Silver v. Brown*, 63 Cal. 2d 841, 846, 409 P. 2d 689 (1966), the court relied upon legislative employees who participated in and were familiar with the drafting of the statute at issue to determine the intent of legislation. Similarly here, where Ms. Gardner confirms that the statements relied upon by the staff were made in error, her sworn statement should be considered.

**c. Limiting the Employer's Role to Making the Deduction if the Authorizations are in Order is Consistent with the Structure of the Statute, as Interpreted by the State Supreme Court**

Discussion of the impact of the 2002 amendments to Section 680(3) must begin with the structure of the subsection prior to the amendments. Prior to the amendments, the import of the subsection was clear. The employer was forbidden from making deductions for political contributions unless the employee had made a written request that it do so. Employee authorizations were valid for one year.

The subsection was authoritatively interpreted in *State of Washington ex rel Evergreen Freedom Foundation v. Washington Education Assoc.*, 140 Wn. 2d 615 (2000) ("*EFF v.*

*WEA*"). In *EFF v. WEA*, the court held that the subsection prohibited an employer from making payroll deductions if the employer knew that sums deducted were earmarked for use as political contributions. The employer's job was not to get the authorizations, but to avoid making the deductions if needed authorizations were not obtained.

Nothing in the *EFF v. WEA* imposed on the employer any responsibility for obtaining the annual authorizations for voluntary deductions. The court assumed, correctly, that the authorizations were to be obtained by the entity that sought the contributions. No one suggested that because the employer could not make the deductions without the authorizations, it was the employer's job to get a new signature every year. But the new regulations are subject to the interpretation that they make it the employer's job to generate the document that replaces annual authorization – annual notice of the right to revoke.

In *EFF v. WEA*, the court held that a union could not violate 680(3). That decision grew out of the structure of 680(3), which is addressed only to the deduction from wages. Since the employer, not the union, pays the wages, only the employer could violate 680(3). There was no penalty for the union failing to get the authorization; the employer simply was prohibited from making the deductions if it did not have the authorizations in hand.

The 2002 amendment did not change the structure of 680(3); it merely replaced annual authorization with annual notice of the right to revoke. The WSLC submits that the sole prohibition in the subsection remains the one against the employer. Whereas the pre-2002 prohibition was on making the deductions if there was no annual authorization, the post-2002 prohibition is on making the deductions if the annual notice of the right to revoke has not been given.

The authorization obligation remains where it has always been – with the entity seeking the contribution. And the employer's obligation remains what it always was – to make the deductions only if it has received confirmation that the appropriate paperwork has been obtained regarding the authorization.

This rule best serves the purpose of 680(3) as a whole. The purpose of 680(3) is to assure that employees make a conscious choice to contribute. Therefore, the rule should be structured to assure that deductions are not made if the annual notice is not provided. That can best be accomplished by forbidding the employer from making deductions if it has not received confirmation that the annual notice was provided. A clear rule authorizing the employer to cease contributions when it has not received such confirmation would advance the purpose of 680(3) and protect the interests of employees and employers.

Therefore, the rule should expressly place the annual notice obligation on the union (or other entity receiving the contributions), and require of the employer only that it cease making deductions if it has not received confirmation that the annual notice was provided. A proposed rule that embodies this approach is attached as "Alternative A."

**d. If the 2002 Amendment Fundamentally Changed the Structure of 680(3), It Should be Interpreted as Applying to Unions as Well as Employers**

Apparently, the proposed rule is predicated on a belief that the 2002 amendment fundamentally changed the structure and operation of 680(3). Even if this were correct, it would not warrant placing on the employer the obligation to provide annual notice of the right to revoke.

Prior to 2002, Section 680(3) ended with the statement that authorizations "were valid for no more than twelve months from the date made by the employee." Under that language, the employer was required to simply disregard authorizations that were no longer valid. Evidently, the PDC staff believes that because the statute no longer refers to authorizations remaining valid only for 12 months, older authorizations remain valid, even if no annual notice is provided. And the employer is required to continue deductions even if it knows that there has been no notice.

If this interpretation is adopted, it eliminates the foundation for the court's decision in *EFF v. WEA*. The decision was predicated on the subject of subsection (3) being employers (and other entities that make deductions from salaries), as opposed to employers and labor organizations, which are both addressed in the other subsections of 680. But if the new final sentence of 680(3) imposes new obligations, albeit in the passive voice, it is necessary to assess whether those new obligations are imposed only on employers, or also on unions. The legislative history reflects that the amendment was intended to impose obligations on unions. In light of that, unions can now violate at least the third sentence of 680(3), even though they could not violate the pre-2002 version of 680(3).

If unions can now violate 680(3), the rule should place the duty to provide annual notice on the union, or other entity receiving the contributions.

If the Commission believes that deletion of the last sentence means that the employer may not treat authorizations as invalid when the required annual notice is not given, the rule should permit the employer to choose a course of action that acknowledges the restrictions in 680(3), without undertaking additional obligations. The employer has nothing to gain from permitting the deduction. And requiring that the employer provide the notice effectively punishes employers for agreeing to the checkoff. At most, if the employer has not received confirmation that the notice has been provided, it should be permitted to either notify the union of that failure or, at its option, provide notice on a standard form.

A proposed rule that incorporates this approach is attached as Alternative B.

## 3. The Rule Should Forbid the Employer from Editorializing in Communications with Contributing Union Members

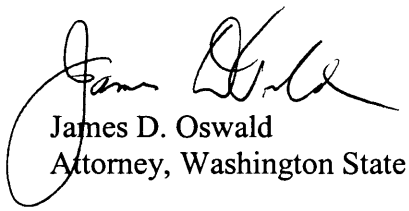
In its submission dated January 22, 2003, the WSLC contended that the proposed rule could result in unfair labor practices by employers. Specifically, including derogatory comments regarding the union's political activities in communications from the employer regarding the right to terminate political contributions would interfere with the union in violation of state and federal law. At the January 28, 2003 hearing, staff indicated that Marvin Schurke, the Executive Director of the Public Employment Relations Commission, had contradicted that conclusion. As the enclosed letter (App. G) reflects, Mr. Schurke acknowledges that communications of the type described could constitute unfair labor practices.

This problem cannot be addressed by simply saying that the union can file an unfair labor practice if the employer engages in improper editorializing. This Commission should not promulgate rules that require direct communication between the employer and employees regarding union programs, without providing protections to assure that there is no improper interference with the union-employee relation. This is especially so as the problem can be addressed by a simple provision that if the employer communicates with the employee regarding the payroll deduction, its message should be limited to the terms of the statute. Therefore, Alternative B restricts the employer to a simple message stating that the notice is provided to comply with statutory requirements.

## CONCLUSION

The WSLC deeply appreciates the time and effort that the Commission has devoted to this important rule. However, it is essential that the rule be correct, the WSLC requests that the Commission decline to adopt the proposed rules, but instead propose and ultimately adopt one of the alternative rules submitted with this letter.

Very truly yours,



James D. Oswald
Attorney, Washington State Labor Council

## ALTERNATIVE A

Union provides notice; employer terminates deductions if it has not received confirmation that notice was provided

(1) [unchanged]

(2)(a) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) shall provide each employee from whom it is receiving contributions pursuant to such payroll deduction written notification as required by paragraphs (2)(c) and (3) of this Rule., and shall submit confirmation that such notice has been accomplished to the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries that has been deducting contributions pursuant to such authorization.

(b) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each employer or other entity responsible for the disbursement of funds in payment of wages or salaries shall terminate any withholding or diversion of any portion of an employee's wages or salaries for contributions to political committees or for use as political contributions, unless it has received written confirmation that within the prior twelve months, the employee has been provided with written notification as required by paragraphs (2)(b) and (3) of this Rule.

[The text that is currently (2)(b) would become (2)(c) ]

(3) [unchanged]

## ALTERNATIVE B

Union provides notice; employer may notify union if no notice, or may send out form notice to affected employees

WAC 390-17-110

(1) [unchanged]

(2)(a) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) shall provide each employee from whom it is receiving contributions pursuant to such payroll deduction written notification as required by paragraphs (2)(c) and (3) of this Rule and shall submit confirmation that such notice has been accomplished to the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries that has been deducting contributions pursuant to such authorization.

(b) Pursuant to RCW 42.17.680(3), as of June 30, 2003, and at least annually by June 30 thereafter, each employer or other entity responsible for the disbursement of funds in payment of wages or salaries shall take either one of the following steps if it has not received confirmation that the notice required by RCW 42.17.680(3) and WAC 390-17-110(2)(a) has been provided within the prior twelve months:

i. Notify the entity receiving payroll deductions pursuant to an authorization described in this RCW 42.17.680(3) that it has not received the confirmation required by paragraph (2)(a); or

ii. Provide notice to each employee from whom it is withholding or diverting wages for contributions to political committees or for use as political contributions a notice in the following form: "Our records reflect that funds are currently being deducted from your wages or salary for contributions to [insert political committee or other recipient] pursuant to a written authorization from you. This communication is mailed pursuant to state law, which requires that you be notified every twelve months that you have the right to revoke the authorization for that request at any time."

[The text that is currently (2)(b) would become (2)(c)]

(3) [unchanged]

# APPENDIX A




# 2001-2002 Biennium Information

## Summary Page for House Bill 2822

Enter 4 digits only: Enter 4 digits only:

Bill Number

e.g. "5024" (Help)

e.g. "5024" or "1134" e.g. "5024" or "1134" Available Documents

2/11/02 9:59 p.m.
WASHINGTON STATE LEGISLATURE
History of HB 2822

HB 2822 Concerning an employee's request to withhold wages for political purposes.

Sponsors: Representatives Romero

-- 2002 REGULAR SESSION --
Jan 29 First reading, referred to State Government.
Feb 8 SG - Executive action taken by committee.
SG - Majority; do pass.
Minority; do not pass.
Passed to Rules Committee for second reading.

## Available Documents

(PDF documents require Acrobat Viewer)

### Text of Bill Versions

Original Bill - 01/29/2002 (PDF)

### Amendments

### Bill Reports and Digests

HOUSE BILL REPORT
HB 2822

As Reported by House Committee On:
State Government

Title: An act relating to requests by employees to withhold or di contributions.

Brief Description: Concerning an employee's request to withhold w purposes.

Sponsors: Representative Romero.

Brief History:
Committee Activity:
State Government: 2/5/02, 2/8/02 [DP].

Brief Summary of Bill□·Removes the requirement that employee reque for political contributions be renewed every 12 months. Once t made, it remains valid until revoked by the employee.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 4 members: Representatives Ro Miloscia, Vice Chair; McDermott and Upthegrove.

Minority Report: Do not pass. Signed by 2 members: Representative Schmidt.

Staff: Catherine Blinn (786-7114).

Background:

The Fair Campaign Practices Act was enacted following passage of I 1992. The initiative imposed campaign contribution limits on elec further regulated independent expenditures, restricted the use of purposes, and required public officials to report gifts received i

A provision of Initiative 134 prohibits employers and labor organi the salary of an employee with the intent that the money be used t political candidate, party, or committee. Employers and labor org prohibited from discriminating against an employee for supporting, contributing to a candidate, ballot proposition, political party o for failing to do so.

Employers may not withhold or divert any portion of an employee's contributions to political committees except upon the written requ The request must be made on a form that informs the employee of th against employer and labor organization discrimination. The reque months from the date it is made. Employers must maintain for publ least three years records of each employee request, the amounts an

withheld, and the amounts and dates funds were transferred to poli

Summary of Bill:

The requirement that employee requests to withhold wages for polit renewed every 12 months is removed. Once the request is made, it and the employee may revoke the request at any time.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which

Testimony For: Political contributions are voluntary and the emplo contribution amount themselves. Employees are kept informed on th for which the contributions are used, and on the process to termin Most contributions are $1 to $10 a month. Because most employees resources to contribute large sums of money to campaigns, politica amounts through wage withholding programs allow employees to parti collective effort to support certain candidates and other politica contributions that allow broader participation in the political pr encouraged.

Testimony Against: Teachers are concerned about the participation activity. Wage withholdings are a powerful tool because they can mandatory deductions. Political contributions are considered a fo political speech. Employees want to maintain control over the typ for which their contributions are used. Labor unions should have employees and justify the political activity. The requirement tha updated every 12 months was included in Initiative 134; the voters honored..

Testified: (Information only) Jamie Lund, Evergreen Freedom Found

(In support) Linda Lanham, Machinists State Council; and Diane McD State Labor Council.

(Opposed) Steve Gano, Gano & Associates.

# APPENDIX B




# 2001-2002 Biennium Information

## Summary Page for Senate Bill 6713

Enter 4 digits only: Enter 4 digits only:

Bill Number

e.g. "5024" (Help)

e.g. "5024" or "1134" e.g. "5024" or "1134" Available Documents

3/28/02 6:08 p.m.
WASHINGTON STATE LEGISLATURE
History of SB 6713

SB 6713 Making voluntary payroll deductions.

Sponsors: Senators Jacobsen; Prentice

-- 2002 REGULAR SESSION --
Jan 28 First reading, referred to State & Local Government.
Feb 8 SLG - Majority; do pass.
Minority; do not pass.
Passed to Rules Committee for second reading.
Feb 12 Made eligible to be placed on second reading.
Feb 14 Placed on second reading by Rules Committee.
Feb 16 Floor amendment(s) adopted.
Rules suspended. Placed on Third Reading.
Third reading, passed: yeas, 25; nays, 22; absent, 2.
-- IN THE HOUSE --
Feb 17 First reading, referred to State Government.
Mar 1 SG - Executive action taken by committee.
SG - Majority; do pass.
Passed to Rules Committee for second reading.
Mar 5 Placed on second reading by Rules Committee.
Mar 8 Rules suspended. Placed on Third Reading.
Third reading, passed: yeas, 57; nays, 39; absent, 2.
Notice given to reconsider vote on third reading.
Vote on third reading will be reconsidered.
Third reading, passed: yeas, 54; nays, 41; absent, 3.
Notice given to reconsider vote on third reading.
Vote on third reading will be reconsidered.
Third reading, passed: yeas, 53; nays, 42; absent, 3.
-- IN THE SENATE --
Mar 9 President signed.
-- IN THE HOUSE --
Mar 11 Speaker signed.
-- OTHER THAN LEGISLATIVE ACTION --
Mar 12 Delivered to Governor.
Mar 27 Governor signed.

# ENGROSSED SENATE BILL 6713

State of Washington 57th Legislature 2002 Regular Sess

By Senators Jacobsen and Prentice

Read first time 01/28/2002. Referred to Committee on State & Loca Government.

AN ACT Relating to voluntary payroll deductions; amending RCW 42.17.680; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 42.17.680 and 1993 c 2 s 8 are each amended to re follows:

(1) No employer or labor organization may increase the salary officer or employee, or give an emolument to an officer, employee, other person or entity, with the intention that the increase in sa or the emolument, or a part of it, be contributed or spent to supp or oppose a candidate, state official against whom recall charges been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against officer or employee in the terms or conditions of employment for ( the failure to contribute to, (b) the failure in any way to suppor oppose, or (c) in any way supporting or opposing a candidate, ball proposition, political party, or political committee. {+ At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions this subsection. +}

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold divert a portion of an employee's wages or salaries for contributi to political committees or for use as political contributions exce upon the written request of the employee. The request must be mad a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. (({- The request is for no more than twelve months from the date it is made by the employee. -})) {+ The employee may revoke the request at any time least annually, the employee shall be notified about the right to revoke the request. +}

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferre a political committee. Copies of such information shall be delive to the commission upon request.

{+ NEW SECTION. +} Sec. 2. This act takes effect July 1, 200

--- END ---

6713 AMS SHED GOLD 002

{+ SB 6713 +} - S AMD 585
By Senators T. Sheldon and McCaslin

ADOPTED 02/16

On page 1, line 16, after "committee." "{+ At least annually, employee from whom wages or salary are withheld under subsection ( this section, shall be notified of the provisions of this subsecti +}"

- END -

{+ EFFECT: +} Requires notification of the prohibition against discrimination based on political contributions.

6713 AMS GARG GOLD 001

{+ SB 6713 +} - S AMD 558
By Senators Gardner, Hargrove and Carlson

ADOPTED 02/16

On page 2, on line 10, after "{- employee -}))" insert "{+ The employee may revoke the request at any time. At least annually, employee shall be notified about the right to revoke the request.

- END -

{+ EFFECT: +} The employee may cancel a political contribution deduction at at any time. The employee must be notified at le once a year about the right to revoke the request

# ENGROSSED SENATE BILL 6713

State of Washington 57th Legislature 2002 Regular Sess

By Senators Jacobsen and Prentice

Read first time 01/28/2002. Referred to Committee on State & Loca Government.

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{+ NEW SECTION. +} Sec. 2. This act takes effect July 1, 200

--- END ---

# APPENDIX C

**ESB 6713**
**Making Voluntary Payroll Reductions**
**Senate Floor Action**

***February 16, 2002***

Olympia, Washington

*Tape 1, side A*

PRESIDENT: Amendment number 558, the secretary will read.

SECRETARY: By Senator Gardner. On page 2 on line 10 after employee insert: The employee may revoke the request at any time. At least annually the employee shall be notified about the right to revoke the request.

PRESIDENT: Senator Gardner.

GARDNER: Thank you Mr. President. I move adoption of amendment 558.

PRESIDENT: Senator Gardner moves that the amendment be adopted. Senator Gardner.

GARDNER: Thank you. We want to make it very clear to the employee that they have the opportunity to cancel their political contribution deduction at any time. We want the employer to notify them at least once a year that they have this privilege. This is the same as on charitable donations, U.S. Savings Bonds, whatever is being deducted from the check. So the employer will now tell, with the passage of this amendment, the employer will now tell the employee that they may cancel it at any time. That there is no penalty for failure to make a political contribution and that they cannot be discriminated against and this happens every year. I think this is a good clarifying amendment. It makes it perfectly clear that this option is available at any time. Thank you.

PRESIDENT: Senator Carlson.

CARLSON: Thank you Mr. President. I am very please that the Senators from the 24th and the 42nd districts worked with me in proposing this

amendment. I have been caught in an organization that required my membership for 31 years. Some of those years in the latter part of the last 15-20 years of my career there was the option, really was required every year. It was referred to as a negative check off. If you didn't remember that you didn't want to make a deduction to a political contribution it was taken out automatically. This amendment provides the opportunity for people to be reminded that there is a deduction. If they don't want to do it they don't have to do it. Further, if that deduction has begun they will have the opportunity to stop that at any time. So I am pleased with the amendment and hope you support it.

PRESIDENT: Senator Zarelli.

ZARELLI: Thank you Mr. President. Actually I am going to rise again. We don't want to pay the employer to take care of the privilege of the choice of the employee. Now we want to put the burden in this amendment on the employer to notify the employee that they have this right. The employer doesn't gain anywhere in this process. Why are we putting all of the burdens on the employer to do everything? Why don't we put the responsibility on the recipient of the gain? If somebody wants to have a dollar taken out of their paycheck for political purposes put the responsibility on the recipient of that political dollar to notify its members in writing or some other way that they have a right to say no. Why are we doing this to the employer? Maybe this in the end is a better thing but again its not the employers responsibility to take out the money and mail the check nor is it the employers responsibility to tell the employee that they have this right. Yet we're putting this burden on them. I would say no to this amendment.

PRESIDENT: Senator Gardner.

GARDNER: Thank you, madam, Mr. President. I did see Senator Franklin leave some time ago. The federal government requires many notifications, notifications about health plans, notifications about pension plans. In addition almost all employers send out annual booklets about charitable donations that can be made through payroll deductions. You usually get some kind of a flyer at least once a year to offer U.S. Savings Bonds. I don't think that this is a problem. This is automatically generated. It goes automatically to the employees. It's just one more line on a notification. It is no burden to the employer at all. It's just a good reinforcement of the fact that the employee has the opportunity to stop his contribution, his voluntary contribution, anytime he wants to. Thank you.

PRESIDENT: Senator Hochstatter.

HOCHSTATTER: Thank you Mr. President. Would Senator Gardner yield to a question?

PRESIDENT: Senator Gardner will you yield?

GARDNER: Yes.

HOCHSTATTER: Thank you Senator Gardner. I see political contributions as the IRS is not a government entity, does that constitute a political organization and can I request that they no longer pester me under this amendment?

GARDNER: I think free speech still prevails Senator Hochstatter and you can ask them for anything I'm just not sure that they are going to comply.

PRESIDENT: Senator Honeyford.

HONEYFORD: Thank you Mr. President. Ladies and Gentleman of the Senate I think this is a very good common sense amendment. Having

worked in situations where this applied we would get a card in our mailbox and ask if we wanted to continue our contribution, just check yes, if we didn't we could throw it away. The same thing we'd get a card from United Way how much we wanted to contribute we check yes and write down the amount and every year they would do that. So this is a perfectly logical, sensible solution. I urge you to vote yes.

PRESIDENT: Senator West.

WEST: Thank you Mr. President. I just want to make it clear that this isn't an opt in amendment. This is simply a notification that if you want to you can opt out. So it does marginally improve the underlying bill but it still requires the opt out. It seems to me I've seen legislation proposed by several folks in this legislature attacking companies such as the phone company because they're sending around a flyer now that says unless you notify us within x number of days we're going to change your phone service and we're going to increase your long distance. I got one in January and you know what, I've been here for the last 45 days or so, or 33 days whatever the heck it is and I haven't gotten around to notifying them because I've been busy and guess what my long distance rate at home has gone up. Now I hope I remember when I go home to call those folks and say stop it, I don't want that. But they send me this note saying unless you opt out, we're going to change your phone rate. And again I think some of you have sponsored legislation to that effect. There is a marketing ploy out there that goes like this. First of all there is legitimate folks that market. Reader's Digest comes to mind. Every year if I want to continue my Reader's Digest subscription I have to sit down and check a box, they'll bill me three

months later but I have to send them a card. If I don't send them a card they stop my subscription. Well actually they don't stop it, what they do is they send me five more cards reminding me that if I don't send a card they're going stop my subscription. And then if I never do send a card they do stop my subscription. Well there is another little thing out there called the CD clubs or the record clubs. The way they get you into the whole thing is they send you things and for a penny you can get 10 records or 10 CDs, it used to be records but with the kids right now they're CDs. For a nickel or for a penny you can get 10 CDs of your choice, of your favorite music and everything and so you send your penny in and they send you some CDs. Along with it is a little tiny notification that says if you don't notify us within 10 days we're sending you the next CD and of course it's of some group you never heard of and could care less about. But you get that notice and say well. So I'm notified as this memo will require us to do which is some what over proven but. I get the notification and I say oh yeah yeah I need to do this. I set it with my bills and other stuff, my stack of legislation that I have to read and then it's like darn, a month later the CD that I have absolutely no interest in shows up and of course I'm billed on my credit card for it. And they send another notification saying you better stop this. Well you know this, that's the whole problem with this. We object to opting out of provisions when private enterprise does it. So we're going to have this turned around on its head. You wouldn't allow a business to do this. Now I'll agree the notification is an improvement, but not much.

PRESIDENT: Senator Hargrove.

HARGROVE: Well there is just one more point to remember and that is that initially the employee had to opt in. They didn't just get put in and have to opt out. The initially had to opt in. This kind of reminds me of the story of a wife that was complaining that her husband never told her that he loved her anymore and the guy says I told you once and if it ever changed I'll let ya know. And I think that's basically what we're talking about here. You made the decision to tell her once and it's the same and so unless you tell her something different. And the point is that you'll even get notice to remind you if you want to tell her something different.

PRESIDENT: Senator West.

WEST: Mr. President, the good Senator just made my point.

PRESIDENT: The question before the Senate is adoption number 558. All those in favor will signify by saying Aye, those opposed No....the Ayes have it. The amendment is adopted.

# APPENDIX D

**BEFORE THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION**
**Re: Proposed WAC 390-17-110**

**Declaration of Georgia Gardner**

1. I am over the age of 18 and am competent to testify to the matters herein.

2. I was a Washington State Senator during the 2002 legislative session.

3. Exhibit A to this declaration reflects the legislative history of ESB 6713, which amended RCW 42.17.680.

4. Senators Jacobsen and Prentice were the sponsors of SB 6713.

6. I became involved in ESB 6713 when it was pulled from the Rules Committee and I became responsible for presentation and passage on the Senate floor.

7. The amendment requiring annual authorization was proposed to assure enough votes for the underlying bill which eliminated the need for unions to obtain annual authorization for payroll deductions for political purposes.

8. I note from the transcript of the floor debate on that amendment (Exhibit B) that I said the annual notice was to be provided by the employer.

9. I misspoke when I made that statement. February 16 was a Saturday. We had been in session for six days, including 12 hours on February 15. ESB 6713 came up for consideration late in the day on February 16. I was mistaken when I referenced the employer providing the notice. I do not recall anything being said before or after the floor discussion indicating that the annual notice would be by the employer, not the union or other entity requesting the contribution.

10. Although there had been only a brief discussion of the amendment before it was introduced on the floor, it was my impression then, as it is now, that the notice required by the amendment would be provided by the entity seeking the contribution - typically the union - rather than by the employer.

11. I have reviewed the transcript of the March 8, 2002 discussion in the House regarding ESP 6713 (Exhibit D). In that discussion, Representative Romero accurately states that the amendment made in the Senate contemplated that the union would provide annual notice of the right to revoke the authorization.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 12, 2003

Georgia Gardner

# APPENDIX E

HOUSE BILL REPORT
ESB 6713

As Passed House:
March 8, 2002

Title: An act relating to voluntary payr oll deductions.

Brief Description: Making voluntary payr oll deductions.

Sponsors: By Senators Jacobsen and Prent ice.

Brief History:
Committee Activity:
State Government: 2/26/02, 3/1/02 [DP].
Floor Activity:
Passed House: 3/8/02, 53 -42.

Brief Summary of Engrossed Bill□·Removes the requirement that employee requests to withhold or d for political contributions be renewed every 12 months.□·Employees must be notified at least discrimination, and of their right to revoke the wage withholding request at an y time.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 4 me mbers: Representatives Romero, Chair; Miloscia, Vice Chair; McDermott and Upthe grove.

Minority Report: Without recommendation. Signed by 3 members: Representatives McMorris, Ranking Minority Member; Schind ler and Schmidt.

Staff: Catherine Blinn (786 -7114).

Background:

The Fair Campaign Practices Act was enact ed following passage of Initiative 134 in

1992. The initiative imposed campaign co ntribution limits on elections for state office, further regulated independent expenditure s, restricted the use of public funds for political purposes, and required public officials t o report gifts received in excess of $50.

A provision of Initiative 134 prohibits e mployers and labor organizations from inc reasing the salary of an employee with the intent that the money be used to support or opp ose a political candidate, party, or committee. Employers and labor organizations are a lso prohibited from discriminating against an employee for supporting, opposing or contributing to a candidate, ballot propo sition, political party or political comm ittee, or for failing to do so.

Employers may not withhold or divert any portion of an employee's wage or salary f or contributions to political committees exc ept upon the written request of the emplo yee. The request must be made on a form that i nforms the employee of the prohibitions against employer and labor organization d iscrimination. The request is valid for 12 months from the date it is made. Employe rs must maintain for public inspection fo r at least three years records of each employe e request, the amounts and dates funds we re withheld, and the amounts and dates funds were transferred to political committees .

Summary of Bill:

The requirement that employee requests to withhold wages be renewed every 12 month s is removed. Once the request is made, it is valid until revoked, and the employee may revoke the request at any time. Employee s must be notified at least annually of t heir right to revoke the request at any time, and that employers and labor organization s are prohibited from discriminating against em ployees for political activity.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect on July 1, 2002.

Testimony For: The amendments placed on the bill in the Senate were appropriate. Voluntary contributions can be terminated by the employee at any time. Many labor groups already remind employees of their rights on a regular basis.

Testimony Against: The political activit y for which the contributions are used ma y change, and employees may not be informed of the changes. New employees can be misled as to the voluntary nature of the contributions. Employees may be confused about who to notify, or how to make the notific ation, when they want to terminate the contributions. The bill will give more c ontrol to unions, and represents a backwa rds step in the efforts towards campaign finance r eform.

Testified: (In support) Diane McDaniel, Washington State Labor Council; and Linda Lanham, Machinists Union.

(Opposed) Jami Lund, Evergreen Freedom F oundation.

# APPENDIX F

**ESB 6713**
**Making Voluntary Payroll Reductions**
**House Floor Action**

***March 8, 2002***

Olympia, Washington

*Tape 1, side A*

SPEAKER: Engrossed Senate Bill 6713 to the third reading. Seeing no objections, ESB third reading remarks. Representative for the 22nd, Representative Romero.

ROMERO: Thank you Mr. Speaker. This bill deals with voluntary payroll deductions. It allows employees that want to have some money taken out of their salary to go for political purposes to be able to do so and not have to have them fill out the forms every year to do it. If there is nothing in this bill that prohibits them from getting out of doing it every year. They can, at any time they can get out of making those deductions. It also requires the unions and those that seek to take the donations to notify every person in the program every year. Please, it's a very simple change and it does save paperwork and it is completely voluntary. Thank you.

SPEAKER: Representative from the 4th, Representative Schindler.

SCHINDLER: Thank you Mr. Speaker. I would rise and ask the body to not support this bill, to vote no. This is making it easier and easier for political organizations or organizations to deduct payrolls from, payroll amounts from employees' salaries. And even though it is voluntary, even though we say that this is just making it easier on them, I think it is absolutely necessary for the organization taking that payroll deduction to make sure that they enlist the yes or the affirmative answer every single time that that deduction is going to be taken each year. I really ask you please to vote against this bill.

SPEAKER: Remarks? Representative from the 20th, Representative DeBolt.

DEBOLT: Thank you Mr. Speaker, Ladies and Gentleman of the House. I would also encourage a no vote. One of the things that we want to do is to be able to provide employees the choice, the freedom to make these decisions. Not just on a yearly basis but just as they need it. Sometimes when you're going through your forms in life and you miss things the opportunity is not always there to make the changes that you want to make and so I would encourage you to vote no.

SPEAKER: Other remarks? Seeing none, the question for the House is final passage of Engrossed Senate Bill 6713. Speaker's about to open the roll call machine. Speaker has opened the roll call machine. Has every member voted? Does any member wish to change his or her vote? Has Representative Lysen vote? Speaker is about to lock the roll call machine. Speaker has locked the roll call machine. Clerk will take the record please.

CLERK: Mr. Speaker there are 57 Yeas, 39 nays, 2 excused or not voting.

SPEAKER: The votes constitute the majority is Engrossed Senate Bill 6713, it's cleared and passed.




# 2001-2002 Biennium Information

## Summary Page for House Bill 2737

Enter 4 digits only: Enter 4 digits only:

Bill Number

e.g. "5024" (Help)

e.g. "5024" or "1134" e.g. "5024" or "1134" Available Documents

1/25/02 6:03 p.m.
WASHINGTON STATE LEGISLATURE
History of HB 2737

HB 2737 Concerning the diversion of an employee's wages for use as a political contribution.

Sponsors: Representatives Romero; Chase

-- 2002 REGULAR SESSION --
Jan 25 First reading, referred to State Government.

## Available Documents

(PDF documents require Acrobat Viewer)

### Text of Bill Versions

Original Bill - 01/25/2002 (PDF)

### Amendments

### Bill Reports and Digests

Digest on Bill - 01/25/2002 (PDF)

**Related Files**

History

Chapter 156, 2002 Laws.
Effective date 7/1/2002.

## Available Documents

(PDF documents require Acrobat Viewer)

### Text of Bill Versions

Session Law version - 03/28/2002 (PDF)
Bill as passed Legislature - 03/09/2002 (PDF)
Engrossed Bill - 02/16/2002 (PDF)
Original Bill - 01/28/2002 (PDF)

### Amendments

House Amendment (mcmo_blin_140_) - 03/08/2002 (PDF)
House Amendment (mcmo_blin_139_) - 03/08/2002 (PDF)
Senate Amendment (shed_gold_002_) - 02/16/2002 (PDF)
Senate Amendment (garg_gold_001_) - 02/16/2002 (PDF)
Senate Amendment (carl_bird_022_) - 02/16/2002 (PDF)
Senate Amendment (_____gorr_021_) - 02/16/2002 (PDF)

### Bill Reports and Digests

Digest on Bill - 04/11/2002 (PDF)
Final Bill Report - 04/03/2002 (PDF)
House Bill Report - 03/14/2002 (PDF)
Senate Bill Report - 02/16/2002 (PDF)

### Related Files

Roll call votes
History

# ENGROSSED SENATE BILL 6713

State of Washington 57th Legislature 2002 Regular Sess

By Senators Jacobsen and Prentice

Read first time 01/28/2002. Referred to Committee on State & Loca Government.

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(2) No employer or labor organization may discriminate against officer or employee in the terms or conditions of employment for ( the failure to contribute to, (b) the failure in any way to suppor oppose, or (c) in any way supporting or opposing a candidate, ball proposition, political party, or political committee. {+ At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions this subsection. +}

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(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferre a political committee. Copies of such information shall be delive to the commission upon request.

{+ NEW SECTION. +} Sec. 2. This act takes effect July 1, 200

--- END ---

# APPENDIX G

# LAW OFFICES OF JAMES D. OSWALD

1218 THIRD AVENUE, SUITE 1500
SEATTLE, WASHINGTON 98101-3021
TELEPHONE (206) 264-8558
FACSIMILE (206) 233-9165
JIMOSWALDLAW@CITYLINQ.COM


March 12, 2003

Doug Ellis, Public Information Officer
Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504-0908

Re: Proposed WACs 390-17-100 and 390-17-110

Dear Doug:

I am writing to address confusion regarding the unfair labor practice issue that may have occurred at the Commission meeting on January 28.

I understood you to say that Marvin Schurke, Executive Director of PERC, had opined that it would not be an unfair labor practice for the employer to include, along with notice under RCW 42.17.680(3), a commentary criticizing the union's political action campaign. Based on my conversation with Mr. Schurke today, that is not accurate.

Mr. Schurke advised me that he saw no ULP if the employer simply passed on notice of the employee's statutory rights under 680(3). I entirely agree with that observation.

However, the current version of WAC 390-17-110 does not prevent the employer from including with the notice, a commentary critical of the union's political action campaign.

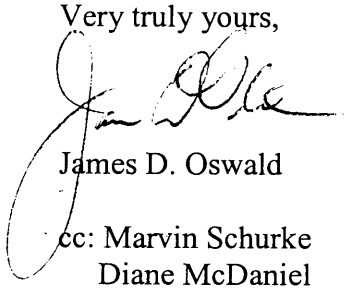
Mr. Schurke agreed that if, along with the notice of 680(3) rights, an employer enclosed a letter denigrating the political activities of the union, that might arguably be an unfair labor practice, based on improper interference with the union. Of course, the ultimate determination of whether an unfair labor practice has been committed is fact specific.

Please provide a copy of this letter to the Commissioners well in advance of the March 25 meeting. It is important that the Commissioners understand that, in Mr. Schurke's opinion, an employer's comments criticizing the union's use of members' voluntary political contributions can, indeed, constitute an unfair labor practice.

The WSLC submits that the Commission is not well-advised to issue a rule that requires employers to communicate with union members regarding political communications, and thereby sets the stage for potential unfair labor practices by employers.

Thank you for your anticipated cooperation with this request.

Very truly yours,



James D. Oswald

cc: Marvin Schurke
Diane McDaniel

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March 14, 2003

Doug Ellis
Public Disclosure Commission
711 Capitol Way, Room 206
P. O. Box 40908
Olympia, WA 98504-0908

Re: Proposed WAC 390-17-110

Dear Mr. Ellis:

As we discussed earlier this afternoon, the WSLC believes the revised proposed WAC 390-17-110 that you emailed to me, a copy of which I am returning to you via fax with this letter, adequately addresses the concerns expressed in my March 14, 2003 submission to the Commission.

Please understand that several affiliates have not yet had an opportunity to review the revision. We are not aware of any labor organization that will actively oppose this revised proposed rule. However, we are not in a position to warrant that none will do so.

Thank you again for your continuing efforts to craft a rule that is both practical and consistent with the statute.

Very truly yours,

James D. Oswald
Enclosure
cc: Diane McDaniel

## AMENDED DRAFT NEW RULE

### WAC 390-17-110 Employee Notification of Withholding Provisions

(1) (a) By June 30, 2003, and at least annually by June 30 thereafter, employees from whom funds are being withheld for contributions to a candidate or political committee under RCW 42.17.680 shall be notified, in writing, of the non-discriminatory provisions of RCW 42.17.680(2). Employee notification shall include the following language:

"No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for:

(i) the failure to contribute to,

(ii) the failure in any way to support or oppose, or

(iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

(b) The written notification shall be provided by the employer or labor organization. The employer or labor organization may agree on which entity shall send the notification.

(2) (a) Pursuant to RCW 42.17.680(3), by June 30, 2003, and at least annually by June 30 thereafter, each employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries shall ensure written notification is directly provided to the employees from whom funds are being withheld for contributions to a candidate or political committee stating that the employee authorization for withholding of wages or salary for such contributions may be revoked at any time. The employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries and the candidate, political committee, or sponsor of the political committee may agree on which of them shall send the notification. ((~~The authorization withholding form is described in WAC 390-17-100.~~))

(b) The written notification shall identify where an employee can submit the revocation, which shall be either:

(i) the name and address of employer's contact or,

(ii) the name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries.

(c) The employee withholding authorization is revoked as of:

(i) the date specified in the revocation or,

(ii) if no date is specified, as of the date the written notification is received by the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries pursuant to RCW 42.17.680.

(3) "Written notification" means notice provided by mail, e-mail, newsletter, payroll insert or other similar direct communication in writing that is addressed to the employee. Posting information on web sites, bulletin boards and other passive communication vehicles shall not constitute notification under RCW 42.17.680. If the written notification appears in a newsletter or similar publication, the notice shall be prominently displayed or announced on the first page of the written communication.

(4) Each employer or other person who provides notice pursuant of subsection (1) or (2) of this section shall maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years. (( ~~Copies of such information shall be delivered to the commission upon request.~~))